IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

OP.No. 39468 of 2002(W)

PETITIONER:

DR.P.P.BALAKRISHNAN, PROFESSOR AND SPECIAL OFFICER, COLLEGE OF VETERINARY AND ANIMAL SCIENCES, POOKKOTTE, MANNUTHY, THRICHUR DISTRICT.

BY ADV. K P KYLASANATHA PILLAY
SMT.SREEDEVI KYLASANATH

RESPONDENTS:
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1. KERALA AGRICULTURAL UNIVERSITY, VELLANIKKARA, THRISSUR, REPRESENTED BY ITS REGISTRAR.

2. THE VICE CHANCELLOR, KERALA AGRICULTURAL UNIVERSITY, VELLANIKKARA, TRICHUR.

BY ADV. SRI.N.D.PREMACHANDRAN, SC, AGRL.UNTY.
SRI.RANJITH THAMPAN, SC FOR UNIVERSITY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P NO.39468/2002

ORDER IN C.M.P.NO.66292 OF 2002 IN OP NO.39468 OF 2002

DISMISSED

21/03/2007 **SD/-**
ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER DATED 16.11.93 ISSUED BY THE UNIVERSITY.

EXT.P2: TRUE COPY OF THE JUDGMENT DATED 29.3.1996 IN OP NO.5744 OF 96.

EXT.P3: TRUE COPY OF THE ORDER DATED 8.8.1986 ISSUED BY THE RESPONDENT.

EXT.P4: TRUE COPY OF THE JUDGMENT IN OP NO.6679/97 DATED 29.9.2000.

EXT.P5: TRUE COPY OF THE JUDGMENT DATED 27.9.2002 IN W.A.NO.2562/2000 ETC.

EXT.P6: TRUE COPY OF THE ORDER DATED 27.2.2001 ISSUED BY THE RESPONDENTS.

EXT.P7: TRUE COPY OF THE ORDER DATED 3.4.2001 PASSED IN THE CASE OF DR.ALEXANDER BY THE EXECUTIVE COMMITTEE.

EXT.P8: TRUE COPY OF THE ORDER RELAXING THE QUALIFICATIONS FOR NORMS PROMOTIONIN RESPCT OF DR.V.K.MALLIKA.

EXT.P9: TRUE COPY OF THE ORDER DATED 29.5.2000 RELAXING TE QUALIFIXATIONS OFR NORMS PROMOTION IN THE CASE OF DR.GEORGE MATHAN.

EXT.P10: TRUE COPY OF THE ORDER DATED 3.5.2001 BEARING NO.GA/C1/42557/97 ISSUED BY THE 1ST RESPONDENT REVERTING THE PETITIONER.

EXT.P11: TRUE COPY OF THE PROCEEDINGS NO.GA/C1/42557/97 DATED 29.10.2002 ISSUED BY THE 1ST RESPONDENT.

EXT.P12: TRUE COPY OF THE APPEAL PETITION DATED 27.11.2002 SUBMITTED BY THE PETITIONER ALONG WITH 3 OTHERS.

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EXT.P13: TRUE COPY OF THE REVISED SLIP NO.ES-A1-1344/22-I/02 DATED 7.12.2002 ISSUED BY THE UNIVERSITY.

EXT.P14: TRUE COPY OF THE ORDER DATED 17.12.2002 IN CMP NO.63986/2002 IN O.P.NO.37885/2002 OF THIS HON'BLE COURT.

EXT.P15: TRUE COPY OF THE ORDER NO.GA/J1/31615/96 DATED 27.10.98 ISSUED BY THE 1ST RESPONDENT.

EXT.P16: TRUE COPY OF THE PAY SLIP BEARING NO.ES(1)/1344/105-I/98-99 DATED 30.10.2000 ISSUED BY THE ASSISTANT COMPTROLLER OF THE UNIVERSITY.

EXT.P17 SERIES: TRUE COPIES OF THE PAY SLIP ISSUED IN RESPECT OF THE PETITIONER'S PAY AND ALLOWANCES DATED 7.9.1996, DATED 22.5.2000 AND DATED 18.1.2001.

//TRUE COPY//

ANTONY DOMINIC, J.
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O.P NO. 39468 OF 2002
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Dated this the 21st day of March, 2007

J U D G M E N T

By Ext.P1 order dated 16/11/1993, the petitioner was appointed as Assistant Professor in the Kerala Agricultural University, the first respondent in this original petition. Subsequently, by Ext.P3 order dated 8/8/96, along with three others, petitioner was promoted as Cadre Professor w.e.f. 25/3/86. The promotion of the petitioner and others by Ext.P3 was challenged before this Court in OP 6679/97, which was disposed of by Ext.P4 judgment dated 29/9/2000, setting aside the same. The judgment of the learned Single Judge was appealed by the affected parties including the petitioner and the same was upheld by the Division Bench of this Court in WA 2562/2000 as per Ext.P5 judgment. In the meanwhile, by Ext.P10 order dated 3/5/01, the petitioner was reverted as Associate Professor w.e.f. 25/3/86. It is also stated that the reversion as per Ext.P10 was confirmed by Ext.P11 order dated 29/10/2002 and according to the petitioner on that date itself, as against a direct recruitment vacancy, the

petitioner got selected as Professor and was appointed by the same University.

2. It was subsequent to this, that by Ext.P13, revised pay slip for the previous period had been issued to the petitioner and excess drawn by him for the period upto his reversion was sought to be recovered from the petitioner consequent upon the erroneous promotion that was enjoyed by him. It is seeking to challenge the recovery so proposed by Ext.P13 and other reliefs that this Original Petition has been filed.

3. At this distance of time, the only issue that survives for consideration is the correctness of the recovery proposed from the petitioner's salary as per Ext.P13. It is a fact that the University, along with three others promoted the petitioner by Ext.P3 order dated 8/8/96. Although this Court had in Ext.P4 judgment set aside the promotion and the same was confirmed by the Division Bench in Ext.P5 judgment, the actual reversion of the petitioner took place much later only following Exts. P10 and P11. In the meanwhile, the petitioner was made to work as Professor following the promotion that was granted by Ext.P3. Thus the fact remains that the petitioner actually worked as

Professor and he cannot be now made liable for the recovery of whatever salary that has been paid to him for the post that was held by the petitioner and the work that was done during the period.

4. The respondents have not filed any counter affidavit in this case. On the materials on record, I am not in a position to say that the petitioner has contributed in any manner for the erroneous promotion that was granted to him. In the circumstances, recovery at this distance of time will be too onerous.

In the aforesaid circumstances, I see no justification to permit recovery of the salary paid to the petitioner during the period when he held the post of Professor following the promotion that was granted to him by Ext.P3. For that reason, I quash Ext.P13 to the extent recovery was sought to be effected from the petitioner. The Original Petition will stand allowed to that extent.

ANTONY DOMINIC, JUDGE.

Rp